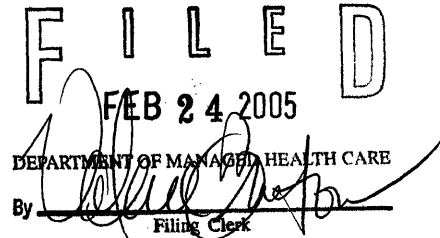


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8 Attorneys for Complainant



10 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE  
11 OF THE STATE OF CALIFORNIA  
12

13 IN THE MATTER OF:

14 PLATINUM HEALTH PLUS, LLC

15 Respondent.  
16  
17

) DMHC No.: 04-265

) OAH No.:

) **ORDER REINSTATING CEASE &  
DESIST ORDER AND TERMINATING  
ITS SUSPENSION; NOTICE OF RIGHT  
TO HEARING**

18 **TO: PLATINUM HEALTH PLUS, LLC**

19 The Director of the Department of Managed Health Care, by and through her  
20 designee, Assistant Deputy Director, Amy L. Dobberteen, makes the following order  
21 reinstating the Cease & Desist Order issued on September 22, 2004 and terminating its  
22 suspension forthwith.

23 This Order is based on Respondent's failure to comply with the terms and provisions  
24 of the Order Temporarily Suspending Cease & Desist Order and Imposing Licensing  
25 Requirements and Conditions issued on January 4, 2005. It is further based on Respondent's  
26 failure to honor its commitments to the Department to utilize only approved advertising and  
27 telephone marketing scripts and to cease selling insurance products in connection with

28 ///

1 discount health cards. In particular, Respondent:

- 2 1. Failed to take the necessary preliminary steps to filing an application for  
3 licensure under the Knox-Keene Health Care Service Plan Act of 1975,  
4 Health & Safety Code sections 1340 *et seq.*, as required by paragraph 1.A.  
5 of that Order, in that it failed to schedule and complete the Department's  
6 electronic filing training course on or before January 31, 2005, as directed  
7 by paragraph 1.A.1.;
- 8 2. Failed to immediately implement the operational changes necessary and  
9 sufficient for full compliance with the provisions of the Health and Safety  
10 Code relating to holding itself out as a health care service plan, deceptive  
11 advertising, misleading telemarketing scripts, inexact and deceptive price  
12 advertising, and inappropriate offers of gifts or bait, among other things;  
13 and, in particular, sections 1360, 1360.1, 1361, 1365(a), 1365.5, 1366, 1367  
14 (a), (b), (c), (d), (e)(1), (f), (g) and (h)(1); 1368.02(b), 1373(a), 1379, 1381,  
15 1384(a), (d) and (f); 1385 and 1395 of the Knox-Keene Act, as required by  
16 paragraph 1.B.;
- 17 3. Failed to comply with the alternative set forth in paragraph 1.C., by  
18 submitting no information and documentation whatsoever, in its letter dated  
19 January 31, 2005, confirming that it altered its business operations  
20 sufficiently and as necessary to bring Respondent's operations within the  
21 scope of the Director's Opinion 01/1; and, despite the Department's  
22 notification of the inadequacy of that communication and specific request  
23 for five categories of documents, failing to submit satisfactory information  
24 and documentation in its subsequent letter dated February 10, 2005;
- 25 4. Failed to submit for the Department's prior review and approval, in Spanish  
26 and in English, any and all advertising and marketing materials to be used  
27 in connection with the sale of discount health cards, as required by  
28 paragraph 1.D. of that Order; and

- 1           5.           Failed to cease and desist from the sale of Accidental Death and  
2                       Dismemberment and Accident insurance in connection with the sale of  
3                       discount health cards, as required by paragraph 1.E.

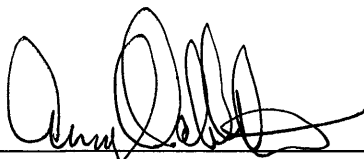
4 **THEREFORE, IT IS HEREBY ORDERED:**

5           That the Order temporarily suspending the Cease & Desist Order issued on  
6           September 22, 2004 is hereby terminated, and the Cease & Desist Order issued on September  
7           22, 2004, a copy of which is attached hereto as Exhibit 1, is reinstated, effective  
8           immediately.

9  
10          Dated: February 24, 2005

LUCINDA EHNES  
Director  
Department of Managed Health Care

11  
12  
13  
14  
15          By:

  
\_\_\_\_\_  
AMY L. DOBBERTEEN  
Assistant Deputy Director  
Office of Enforcement  
Department of Managed Health Care

1 AMY L. DOBBERTEEN  
Assistant Deputy Director, Bar No. 155111  
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10 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE  
11 OF THE STATE OF CALIFORNIA  
12

13 IN THE MATTER OF:

14 PLATINUM HEALTH PLUS, LLC

15  
16 Respondent.  
17  
18

) DMHC No.: 04-265

) OAH No.:

) **CEASE AND DESIST ORDER AND  
NOTICE OF RIGHT TO HEARING**

) (Health and Safety Code sections 1349,  
1360, 1386, 1391 and 1395)

19 TO: PLATINUM HEALTH PLUS, LLC  
20

21 The Director of the Department of Managed Health Care; by and through her  
22 designee, Assistant Deputy Director Amy L. Dobberteen, after investigation, determines as  
23 follows:

24 I.

25 **INTRODUCTORY STATEMENT**

26 1. California Health and Safety Code section 1349 requires certain entities  
27 arranging for health-care services to first obtain a license from the California Department of  
28 Managed Health Care. Respondent is acting as a health care service plan, arranging for the

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DEPARTMENT OF MANAGED HEALTH CARE  
By Cha  
Filing Clerk

1 provision of health care services, and accepting periodic payments. Accordingly, it is  
2 operating as a health care service plan as defined in Health and Safety Code section  
3 1345(f)(1), and required to obtain a license under the Knox-Keene Health Care Service Plan  
4 Act of 1975 ("Knox-Keene Act"). Respondent's failure to obtain a license subjects it to the  
5 enforcement powers of the Department of Managed Health Care.

6 2. Disregarding California law, the out-of-state entity set forth above is soliciting  
7 low income, Spanish speaking California residents for purposes of selling health-care  
8 services without a license, misleading California consumers and misrepresenting its product.  
9 It purports to provide a discount on health care services, but no discounts are available  
10 because providers have no arrangement with Respondent to give discounts, and because  
11 discounts are only available to members who pay in full for doctor and hospitalization  
12 services before or on the day they are rendered.

13 3. Therefore, the Department of Managed Health Care, by the Order below,  
14 hereby directs Respondent to cease and desist from any further unauthorized, deceptive and  
15 unlawful activity in the State of California.

## 16 II.

### 17 STATUTORY AUTHORITY

18 4. The Director of the Department of Managed Health Care is vested with the  
19 responsibility to administer and enforce the Knox-Keene Health Care Service Plan Act of  
20 1975 ("Knox-Keene Act", Health and Safety Code section 1340, *et seq.*) The intent and  
21 purpose of the Knox-Keene Act is to promote the delivery and quality of health and medical  
22 care to the people of California who enroll in a health care service plan by, among other  
23 things: "Prosecuting malefactors who make fraudulent solicitation or who use deceptive  
24 methods, misrepresentations, or practices, which are inimical to the general purpose of  
25 enabling a rational choice for the consumer public." (Health and Safety Code sections 1341  
26 and 1342(c).)

27 5. Health and Safety Code section 1345(f)(1) defines a health care service  
28 plan to mean:

1 Any person who undertakes to arrange for the provision of  
2 health care services to subscribers or enrollees or to reimburse  
3 any part of the cost for those services, in return for a prepaid  
or periodic charge paid by or on behalf of the subscribers or  
enrollees.

4 6. The Legislature has plainly evidenced its intent as to the application of the  
5 Knox-Keene Act in Health and Safety Code section 1399.5, which provides:

6 It is the intent of the Legislature that the provisions of this  
7 chapter shall be applicable to any private or public entity or  
8 political subdivision which, in return for a prepaid or periodic  
9 charge paid by or on behalf of a subscriber or enrollee,  
provides, administers or otherwise arranges for the provision  
of health care services.....

10 7. Any person conducting business as a health care service plan is required to  
11 have a license under the Knox-Keene Act pursuant to Health and Safety Code section 1349,  
12 which provides:

13 It is unlawful for any person to engage in business as a plan in  
14 this state or to receive advance or periodic consideration in  
15 connection with a plan from or on behalf of persons in this  
16 state unless such person has first secured from the director a  
17 license, then in effect, as a plan or unless such person is  
18 exempted by the provisions of Section 1343 or a rule adopted  
thereunder. A person licensed pursuant to this chapter need  
19 not be licensed pursuant to the Insurance Code to operate a  
20 health care service plan or specialized health care service plan  
21 unless the plan is operated by an insurer, in which case the  
insurer shall also be licensed by the Insurance Commissioner.

22 8. Untrue and misleading advertising and solicitation, both by affirmative  
23 misstatement and by omission of important information, is prohibited by Health and Safety  
24 Code section 1360, which provides:

25 (a) No plan, solicitor, solicitor firm, or representative shall  
26 use or permit the use of any advertising or solicitation which  
27 is untrue or misleading, or any form of evidence of coverage  
28 which is deceptive. For purposes of this article:

1. A written or printed statement or item of information  
shall be deemed untrue if it does not conform to fact in  
any respect which is, or may be significant to an  
enrollee or subscriber, or potential enrollee or  
subscriber in a plan.
2. A written or printed statement or item of information  
shall be deemed misleading whether or not it may be  
literally true, if, in the total context in which the

1 statement is made or such item of information is  
2 communicated, such statement or item of information  
3 may be understood by a person not possessing special  
4 knowledge regarding health care coverage, as  
5 indicating any benefit or advantage, or the absence of  
6 any exclusion, limitation, or disadvantage of possible  
7 significance to any enrollee, or potential enrollee or  
8 subscriber, in a plan, and such is not the case.

9 \*\*\*

10 (b) No plan, or solicitor, or representative shall use or  
11 permit the use of any verbal statement which is untrue,  
12 misleading, or deceptive or make any representations  
13 about coverage offered by the plan or its cost that does  
14 not conform to fact. All verbal statements are to be  
15 held to the same standards as those for printed matter  
16 provided in subdivision (a).

17 9. Health and Safety Code section 1386(b)(7) specifically proscribes conduct that  
18 constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of  
19 the Business and Professions Code.

20 10. Health and Safety Code section 1395 further requires that:

21 ...Any price advertisement shall be exact, without the use of  
22 such phrases as "as low as," "and up," "lowest prices" or  
23 words or phrases of similar import. ... Price advertising shall  
24 not be fraudulent, deceitful, or misleading, nor contain any  
25 offers of discounts, premiums, gifts, or bait of similar nature.  
26 In connection with price advertising, the price for each  
27 product or service shall be clearly identifiable.

28 11. The Director is empowered to enforce compliance with this Act by Health and  
Safety Code section 1391, subdivision (a)(1), which provides in relevant part:

The director may issue an order directing a plan, solicitor  
firm, or any representative thereof, a solicitor, or any other  
person to cease and desist from engaging in any act or  
practice in violation of the provisions of this chapter, any rule  
adopted pursuant to this chapter, or any order issued by the  
director pursuant to this chapter.

#### IV.

#### Violations of Law

12. Respondent is undertaking to arrange for the provision of health-care services  
to members, either directly or through arrangements with others, in return for a periodic

1 charge paid by the members, within the meaning of Health and Safety Code section  
2 1345(f)(1). Additionally, Respondent is providing, administering or otherwise arranging for  
3 the provision of health care services within the meaning of Health and Safety Code section  
4 1399.5. Respondent therefore is engaging in business as a health care service plan in this  
5 state and receiving advance and periodic consideration in connection with a plan from or on  
6 behalf of persons in this state, without having first secured a license from the Director. This  
7 conduct violates Health and Safety Code section 1349.

8 13. Respondent's advertising and solicitation practices offer discounts from  
9 doctors, dentists, hospitals, and pharmacies that are unavailable because Respondent does not  
10 respond within three days as represented; no doctors are available nearby, providers have  
11 never heard of Platinum Health Plus; providers will not accept the discount card; providers  
12 have not agreed to offer discounted prices, or providers give uninsured patients a discount  
13 off the amount insureds pay, so even with the card, a member would pay the same or less  
14 than if paying cash without the card. Nor are discounts available from pharmacies such as  
15 Costco, despite the fact that Respondent's Membership Guide lists Costco as a participating  
16 pharmacy. Additionally, the advertising and solicitations are misleading because they  
17 promise a list of providers but do not send one. Finally, Respondent's marketing of a 30 day  
18 Satisfaction Guarantee involves representations that are untrue. These practices violate  
19 Health and Safety Code sections 1360(a)(1) and (b). (Exhibit A attached hereto)

20 14. Respondent's advertising and solicitation practices are misleading in violation  
21 of section 1360(a)(2) and (b) by using language typically associated with insurance  
22 coverage, and by offering its health care product in conjunction with Accidental Death and  
23 Dismemberment and Accident insurance products. (Exhibit B attached hereto)

24 15. Respondent's advertising and solicitations are misleading in further violation of  
25 section 1360(a)(2) and (b) by failing to mention, or to clearly and conspicuously disclose,  
26 that payment in full for doctor services and hospitalization is required at the time that  
27 services are rendered. This limitation or disadvantage is of significance to both potential  
28 members and paying members, particularly for the low-income population targeted by



1 Respondent.

2 16. Respondent's conduct described herein constitutes fraud or dishonest dealing  
3 or unfair competition, as defined by section 17200 of the Business and Professions Code, in  
4 violation of Health and Safety Code section 1386(b)(7).

5 17. Respondent is engaging in prohibited price advertising using terms such as "up  
6 to," in fraudulent, deceitful, or misleading advertising of non-existent discounts, and of  
7 offering insurance policies as premiums, gifts or bait to persuade consumers to enroll as  
8 members, in violation of Health and Safety Code section 1395.

9  
10 V.

### 11 CEASE AND DESIST ORDER

12 Based on the foregoing, the Director finds that Respondent has violated Health and  
13 Safety Code sections 1349; 1360, subdivisions (a)(1), (a)(2), and (a)(3); 1386(b)(7) and  
14 1395.

15 **THEREFORE**, pursuant to Health and Safety Code section 1391 of the Knox-Keene  
16 Act:

### 17 IT IS HEREBY ORDERED:

18 1. That Respondent, and any of its directors, officers, trustees, managers,  
19 affiliates, agents, and all persons participating with them or acting in concert with them, shall  
20 immediately **CEASE AND DESIST FROM**:

- 21 a. Operating in California without a Knox-Keene Act license.
- 22 b. Promoting any further deceptive or misleading advertisements or  
23 solicitations to California residents;
- 24 c. Conducting any enrollment activities in California for health-care  
25 memberships, including, but not limited to, medical, dental,  
26 hospitalization, and pharmacy;
- 27 d. Taking, receiving, or forwarding any application for health-care  
28 memberships from California residents;
- e. Collecting or receiving, in full or in part, any payments for health-care

1 memberships from or on behalf of California residents;


2 2. Respondent shall disclose in any advertisement or solicitation that may  
3 reasonably be viewed by residents of the State of California, including, but not limited to,  
4 any Internet web page or advertisement that their health care membership product is not  
5 available in the State of California.

6 3. Respondent shall make refund all monies to demanding members without  
7 undue delay.

8  
9 Dated: September 22, 2004

LUCINDA EHNES  
Director  
Department of Managed Health Care

10  
11  
12  
13  
14 By:

  
\_\_\_\_\_  
AMY L. DOBBERTEN  
Assistant Deputy Director  
Office of Enforcement  
Department of Managed Health Care